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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/965,932

09/28/2001

Richard Foltak

M-11646 US

3289

33031 7590 12/21/2006  
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AUSTIN, TX 78759

EXAMINER

NEURAUTER, GEORGE C

ART UNIT

PAPER NUMBER

2143

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/21/2006

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/965,932

Applicant(s)

FOLTAK ET AL.

Examiner

George C. Neurauter, Jr.

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2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-31, 33-49 and 51-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 6-31, 33-45 and 64-70 is/are allowed.
- 6) ☒ Claim(s) 46-49 and 51-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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**DETAILED ACTION**

Claims 1-4, 6-31, 33-49, and 51-70 are currently presented and have been examined.

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 October 2006 has been entered.

***Response to Arguments***

Applicant's arguments with respect to "RFC 2866" in view of Hundscheidt have been fully considered and are persuasive. The rejection of claims 1-4, 6-25, 28-31, 33-49, and 51-70 has been withdrawn.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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Claims 46-49 and 51-63 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 46-49 and 51-63 recites a computer program product encoded in a computer readable medium or media. In one of the embodiments of such computer readable media, the specification discloses on page 4, lines 11-13 that "Additionally, applications may be in the form of electronic signals modulated in accordance with the application and data communication technology when accessed via network modem or interface."

Signals used as computer readable media are not currently considered to be statutory subject matter since a signal encoded with functional descriptive material does not fall under any of the four statutory classes. See ANNEX IV "Computer-Related Nonstatutory Subject Matter", section (c) "Electro-Magnetic Signals" of the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility", released 22 November 2005 in the Official Gazette ("Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in Sec. 101...These interim guidelines propose that such signal claims are ineligible for

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patent protection because they do not fall within any of the four statutory classes of Sec. 101.")

The claims must be amended to overcome this rejection under 35 USC 101 in order to remove the signal embodiment as a computer readable medium within the scope of the claim. It is suggested by the Examiner that the medium be amended to recite a non-signal medium such as a computer readable storage medium, which will overcome the rejection.

***Allowable Subject Matter***

Claims 1-4, 6-31, 33-45, and 64-70 are allowed in view of the Applicant's argument, the cited prior art of record, and the prosecution history of the instant application, from which the reasons for allowance are clear.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

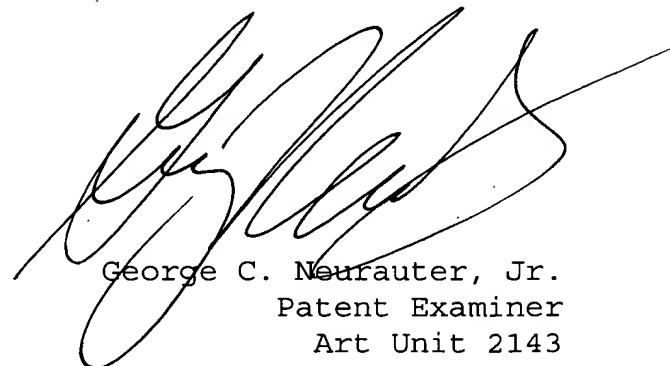
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is 571-272-3918. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



George C. Neurauter, Jr.  
Patent Examiner  
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